THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.14739 of 2003

Between:

Ch. Murali.

…. Petitioner

and

1. The Discom Board, Northern Power Distribution Company of A.P. Ltd., Corporate office at Warangal and others.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.14739 of 2003

ORDER:

Proceedings of the 1st respondent dated 5.6.2003 in rejecting the appeal filed against the orders of the 2nd respondent dated 1.2.2003, wherein punishment of removal from service was imposed on the petitioner, is impugned in this writ petition as orders passed without application of mind, contrary to principles of natural justice, illegal, irrational and in violation of the fundamental rights of the petitioner.

Facts, to the extent necessary for this writ petition, are that the petitioner, holding a Diploma in Electrical Engineering, was appointed as a Sub Engineer in the Andhra Pradesh State Electricity Board (APSEB) and joined service on 19.3.1969. He was subsequently promoted as Addl. Assistant Engineer on 8.10.1986 and continued in the said post till 24.2.2003 when he was removed from service.

The Superintending Engineer sent a report dated 15.1.2002 to the Managing Director, Northern Power Distribution Company Limited (NPDCL), recommending disciplinary against the petitioner alleging that he had collected development charges and security deposits from prospective consumers of 19 distributions, that he had released services between January, 2000 and May, 2000, that he did not send the Demand Drafts to the Divisional Officer/ERO, Jangoan and that the services released return had not been sent to the Electricity Revenue Officer, causing revenue loss to a tune of Rs.8.00 lakhs.

The Petitioner was placed under suspension on 18.1.2002 and the Divisional Engineer was appointed as an enquiry officer. The enquiry officer issued charge sheet dated 19.1.2002 framing nine charges to which the petitioner submitted his explanation on 15.3.2002. The enquiry officer also issued a supplemental charge

sheet dated 23.5.2002 framing four additional charges to which also the petitioner submitted a detailed explanation on 14.6.2002. The General Manager issued show cause notice dated 17.10.2002 asking the petitioner to show cause as to why he should not be removed from service. Along with the show cause notice, a copy of the findings of the enquiry officer was enclosed. The petitioner submitted his explanation to show cause notice on 20.11.2002 and 27.11.2002. However, the petitioner was removed from service by the impugned order of the 2nd respondent dated 1.2.2003.

Aggrieved thereby, the petitioner preferred an appeal before the Board of Directors of the Northern Power Distribution Company Limited on 31.3.2003 and the 1st respondent rejected his appeal by proceedings dated 5.6.2003.

While several contentions are raised by the petitioner, the writ petition is disposed of on the short ground that the disciplinary authority (Managing Director), who had passed the order of removal, also participated in the deliberations of the appellate authority and was part of the Board of Directors which rejected the appeal of the petitioner.

The Chairman and Managing Director, APNPDCL, Warangal, vide memo No.CGM/HRD/GM(S)/AS(DC)/94-C/02-14 dated 1.2.2003, awarded the punishment of removal from service on the petitioner and informed him that an appeal lay against the said order with the DISCOM Board. The appeal preferred by the petitioner was heard and examined by the Board of Directors of the Andhra Pradesh Northern Power Distribution Company Limited, Warangal and, vide proceedings in Memo No.CMD/CGM(HRD)/GM(S)/AS-III/PO-V/F.No.94-C/02-15 dt. 5.6.2003, the appeal preferred by the petitioner was rejected.

In ground No.1 of the affidavit filed in support of the writ petition, the petitioner specifically contended as under:

"The Chairman & Managing Director, APNPDCL, Warangal who was the Disciplinary Authority and who passed orders removing the petitioner from service, was subsequently promoted as the Chairman of DISCOM Board, subsequent to filing of the appeal, and the Learned Appellate Authority instead of independently arriving at a conclusion on the submissions made by the petitioner, had simply rejected the appeal by holding that, "The Discom Board/APNPDCL/Warangal has carefully examined the appeal of Sri C.H.Murali, Ex-AAE/Op/Lingala Ghanpur and observed that the AAE has not put forth any fresh points worth consideration other than those already put forth in the earlier explanation. Hence, it is

decided to reject the appeal", and as such great prejudice is caused to the petitioner. "

It is the case of the petitioner that the Chairman and Managing Director who was the disciplinary authority and had passed the order of removal, was subsequently promoted as Chairman of the DISCOM Board which decided the appeal preferred by him.

In the counter affidavit filed the fact that the Chairman and Managing Director, who had passed the order of removal in his capacity as the disciplinary authority, had participated in the deliberations and was party to the decision of the Board, to reject the appeal filed by the petitioner, is not disputed. All that is stated in the counter affidavit is that the DISCOM Board not only consists of the Chairman, but also other Directors and that the appeal filed by the petitioner was considered by all the Directors and was rejected. It is not even the case of the respondents that the disciplinary authority, who was subsequently promoted as Chairman of the DISCOM board, had not participated during the deliberations when the appeal of the petitioner was considered. It is therefore not in dispute that the disciplinary authority, who had passed the order of removal and against whose order the appeal had been preferred to the Board, also participated in the deliberations and was party to the decision of the Board of Directors which rejected the appeal filed by the petitioner.

A Division Bench of this Court in **M/s Sridhar Lime Products v. The Deputy Commissioner of Commercial Taxes** held thus:

" ……..The test to be applied for determining bias was substantially standardized by the House of Lords in **R v Gough** wherein it was held that, after ascertaining all the relevant circumstances, the correct test to be applied was whether there was a 'real danger' that the appellant had not had a fair hearing. This meant deciding whether there was a real danger in the sense of a real possibility, but less than a probability, of bias on the part of the member of a Tribunal. It was held to be unnecessary, in formulating the test of bias, to look at the matter through the eyes of the reasonable man, because the court personifies the reasonable man in such cases. It was also pointed out that the test is not concerned with the actual state of mind of the person who is alleged to be biased, as bias is insidious and may not be present in the conscious mind. Public confidence demanded that justice had to be seen to be done. This meant that the court should examine all the necessary material so as to be satisfied that there was no danger that the alleged bias had created injustice.

……..The House of Lords in **Porter Vs. Magill** suggested a modest adjustment of the test prescribed in **R Vs. Gough** (9 supra) and held that the Court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased and must then ask whether those circumstances would lead of a fair minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that

the Tribunal was biased and that the question to be considered was whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased.

…….The House of Lords in **Lawal Vs. Northern Spirit Ltd** took note of the small but important shift provided in **Porter's** case (10 supra), which has as its core the need for "the confidence which must be inspired by the courts in a democratic society and held that public perception of the possibility of unconscious bias was the key, that it was unnecessary to delve into the characteristics to be attributed to the fair-minded and informed observer, what could confidently be said is that one is entitled to conclude that such an observer would adopt a balanced approach, and that 'a reasonable member of the public is neither complacent nor unduly sensitive or suspicious'.

Now to the case on hand:

…….The impugned order dated 21-3-2005 was passed by Sri K.Radhakrishna Rao as the Deputy Commissioner of Commercial Taxes, Guntur II consequent upon the matter being remanded for de novo verification by the Sales Tax Appellate Tribunal in T.A.No.1494/99 and batch which included T.A.No.164 of 2001. Sri K.Radhakrishna Rao had appeared, as the Additional State representative of the State of Andhra Pradesh in T.A.No. 1494 of 2001 and batch before the Sales Tax Appellate Tribunal. Having appeared for one of the parties in a lis before the Sales Tax Appellate Tribunal, Sri K.Radhakrishna Rao ought not to have either heard or decided the same matter as the Deputy Commissioner of Commercial Taxes and should instead have transferred the case to another officer. The question is not whether Sri K.Radhakrishna Rao had predetermined the issue for he may well have considered the case dispassionately. The test is whether a fair minded and informed observer, having considered the facts, would have concluded that there was a real possibility of Sri K.Radhakrishna Rao being biased. We have no doubt in our mind that such would undoubtedly have been the conclusion reached by a fair minded and informed observer."

The test is not whether the Chairman and Managing Director was actually biased, the test is as to whether a fair minded and informed observer would have concluded that there was a real possibility of his being biased. Having taken the decision and having passed the order imposing punishment of removal from service on the petitioner, the disciplinary authority, the 2nd respondent should not have participated in the deliberations of the appellate authority, the Board of Directors, and should not have been party to its decision to reject the appeal. A fair minded and informed observer would undoubtedly have concluded that there was a real possibility of the Chairman and Managing Director being biased. While it is true that the Board consists of other directors also, participation of the disciplinary authority in the deliberations of the Board and his being a party to the decision, undoubtedly vitiates the order of the appellate authority.

The order of the 1st respondent dated 5.6.2003 is therefore set aside. This order shall not preclude the 1st respondent from independently considering the appeal preferred by the petitioner on its own merits and to take an appropriate decision. Needless to the state that when the appeal preferred by the petitioner is being considered on its merits by the Board of Directors, the disciplinary authority shall neither participate in the deliberations nor shall he be a party to the decision which may be taken by the Board in this regard.

The writ petition is accordingly disposed of. No order as to costs.

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